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April 10, 2009

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Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

Re: Petition of Verizon New England Inc. for Forbearance Pursuant to 47 U.S.C. § 160(c) in Rhode Island (WC Docket No. 08-24); Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in Cox's Service Territory in the Virginia Beach Metropolitan Statistical Area (WC Docket No. 08-49)

Dear Ms. Dortch:

During the course of the above-captioned proceedings, Verizon has submitted voluminous evidence demonstrating that, in both Rhode Island and Cox's service territory in the Virginia Beach MSA, competition is even more advanced than it was in Omaha with respect to both mass-market and enterprise customers. The record here accordingly establishes that, consistent with the Commission's prior decision in the *Omaha Forbearance Order*,¹ the statutory criteria for forbearance are met, and Verizon's petitions in the above-caption proceedings ("Rhode Island Petition" and "Virginia Beach Petition" respectively) should be granted. In a meeting on March 17, 2009, Staff asked several questions about the evidence that Verizon has submitted. Responses to those questions and other issues raised in the meeting with Staff are set forth below. We also respond to a recent CLEC ex parte urging the Commission to change the established forbearance standard and to adopt stringent "market share" and "multiple

¹ *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005) ("*Omaha Forbearance Order*").

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competitor” tests comparable to those the Commission and the D.C. Circuit have repeatedly rejected.²

1. Updated Data Further Demonstrate that Forbearance Is Warranted

At the request of Staff, Attachment A contains updated versions of Exhibits 5-9 with respect to Verizon’s petitions for both Rhode Island and Virginia Beach.³ The access line data in Verizon’s exhibits – both those previously filed and those attached here – include residential access lines served by FiOS. As shown in Attachment B, using these data, Verizon continues to meet the share-of-residential lines test that the Commission has previously applied.

With respect to Exhibit 8 for the Rhode Island Petition, which provides totals of retail special access lines by type and by wire center, the “other” category is comprised of Ethernet services, which range in bandwidth from 10 megabits per second to 1 Gigabit per second. Depending on the bandwidth, an Ethernet circuit represents between 156 and 16,625 voice-grade equivalent lines. Many of the Ethernet lines in Rhode Island could not be assigned to a specific wire center because the billing data for such lines does not contain sufficient detail to associate the line with a specific location. In such cases, Verizon assigns the circuit a Special Billing Number (also known as an Orphan Wire Center). Verizon reports Special Billing Numbers at the state level, and therefore included these in the totals for Rhode Island. Verizon does not have a way to assign lines assigned Special Billing Numbers to an MSA, and therefore did not report those totals for Virginia Beach. The totals for the “other” category also are lower in the Virginia Beach Petition Exhibit 8 than in the Rhode Island Petition Exhibit 8 because [Begin Confidential]

[End

Confidential].

With respect to Exhibit 9 for both the Rhode Island and Virginia Beach Petitions, which provides totals of wholesale special access lines by type and by wire center, “FMS” refers to Verizon’s Facilities Management Service. FMS is a special purchasing plan for carriers to obtain special access facilities on a DS0-equivalent basis. Under this option, Verizon manages the engineering and design of a customer’s special access network from the customer’s designated primary premises to serving wire centers within the same LATA. [Begin Highly Confidential]

² See Letter from Thomas Jones, Willkie Farr & Gallagher LLP et al., filed on behalf of Alpheus, Broadview, Cavalier, Cbeyond, Integra et al., to Marlene Dortch, FCC, WC Docket Nos. 08-24, 08-49 (Mar. 26, 2009) (“March 26 CLEC Letter”).

³ Exhibit 5 filed with the Rhode Island Petition included data from the white pages listings database, which has since been migrated to the same listings database on which Verizon relied for its Virginia Beach Petition data. Verizon is not including an update to Exhibit 11 for either the Rhode Island or Virginia Beach Petitions because the data reported in the original Exhibits has not changed.

[End Highly Confidential].

As Verizon has previously explained, the data that Verizon has submitted for both the Rhode Island and Virginia Beach Petitions include lines served by the former MCI.⁴ In Rhode Island, the former MCI provided service using both its own facilities and through the use of unbundled network elements and resale purchased from Verizon. In the Virginia Beach MSA, the former MCI provided service only through unbundled network elements. The data that Verizon submitted regarding the former MCI is based on the Form 477 reports that the former MCI filed with the Commission. According to those filings, the former MCI served **[Begin Confidential]** **[End Confidential]** business lines over its own facilities as of June 30, 2007. As of that same date, MCI did not provide any mass-market lines over its own facilities in Rhode Island.

With respect to Exhibit 12 for both the Rhode Island and Virginia Beach Petitions, the reported data include all types of collocation by wire center, not just fiber-based collocation. The only reliable way for Verizon to determine whether a collocation is fiber-based is to conduct a physical inspection of the collocation arrangement, which Verizon has not recently done in Rhode Island or Cox's service territory in the Virginia Beach MSA.

2. The Commission Should Rely on National Estimates of Wireless Cut-the-Cord Subscribers

Verizon's petitions have demonstrated that, even if the Commission were to depart from the approach it took in Omaha and Anchorage and apply a share-of-residential lines test, Verizon meets this test in both Rhode Island and in Cox's service territory in the Virginia Beach MSA. In both cases, competitors' share of residential lines is approximately **[Begin Confidential]** **[Begin Confidential]** or more when cut-the-cord wireless subscribers are included, as they should be, in the competitive analysis.⁵ Moreover, this is true even if the Commission were to attribute Verizon Wireless cut-the-cord subscribers to Verizon, despite the fact that a loss of a Verizon wireline subscriber to Verizon Wireless is competitively equivalent to a loss to another competitive provider.⁶

Verizon further demonstrated that it meets the share-of-residential lines test regardless of whether the Commission follows its past approach of using the national figure of cut-the-cord

⁴ See Petition of Verizon New England for Forbearance, WC Docket No. 08-24, at 17 n.18, 31 (Feb. 14, 2008) ("Rhode Island Pet'n"); Petition of the Verizon Telephone Companies for Forbearance, WC Docket No. 08-49, at 17 n.19, 32, (Mar. 31, 2008) ("Virginia Beach Pet'n").

⁵ Rhode Island Pet'n at 13-14 & Attach. A; Virginia Beach Pet'n at 13 & Attach. B.

⁶ Rhode Island Pet'n at 15-16; Virginia Beach Pet'n at 15.

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households from the Centers for Disease Control and Prevention (“CDC”), *see Six MSA Order*⁷ App. B, or whether it uses the CDC’s regional estimates of adults who have cut the cord.⁸ As Verizon has explained, the Commission should continue to rely on the national figure.⁹ This figure is a reasonable proxy for the level of competitive discipline that wireless imposes on wireline in any given market. Indeed, if anything the national figure is conservative, because the highest level of substitution already achieved in some states (which according to CDC is as high as 26 percent, *see infra*.) shows the trajectory and level of substitution that is likely to be achieved in other states. For this reason among others, Verizon has argued that it is inappropriate to use a static and backward looking metric such as share-of-residential-lines to gauge market competitiveness. But even if the Commission continues to follow such an approach, it must at least use a current and comprehensive estimate of the degree to which wireless imposes competitive discipline on wireline today. Verizon’s petition and reply comments included CDC national figures for 2007. The CDC has since released revised regional figures for the first half of 2008, which shows continued growth of households that have cut the cord.¹⁰ And other evidence suggests that since the first half of 2008, the number of households that have cut the cord has continued to grow, driven in part by worsening economic conditions in that timeframe.¹¹

Verizon’s petitions and reply comments also included CDC regional cut-the-cord figures for 2007. The CDC has since released revised regional figures for the first half of 2008, which likewise show continued growth of adults that have cut the cord.¹² In addition, on March 11,

⁷ *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, Memorandum Opinion and Order, 22 FCC Rcd 21293 (2007) (“*Six MSA Order*”).

⁸ *See supra* n.5 ; *see also* Reply Comments of Verizon, *Petition of Verizon New England for Forbearance Pursuant to 47 U.S.C. § 160(c) in Rhode Island*, WC Docket No. 08-24, Attach. B (May 12, 2008) (“*R.I. Reply*”).

⁹ *See, e.g.*, *R.I. Reply* at 12-14.

¹⁰ Stephen J. Blumberg & Julian V. Luke, Div. of Health Interview Statistics, Nat’l Ctr. for Health Statistics, CDC, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January-June 2008*, <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200812.pdf> (Dec. 17, 2008) (“*CDC 2008 Wireless Substitution Report*”).

¹¹ *See, e.g.*, J. Armstrong *et al.*, Goldman Sachs, *The Quarter in Pictures: 4Q2008 North America Telecom Services Review*, at 19 (Mar. 2009) (“Line loss rates continue to worsen, with macroeconomic pressures likely driving accelerating wireless substitution.”).

¹² *See CDC 2008 Wireless Substitution Report*.

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2009, the CDC released a new report that provides “state-level estimates” of cut-the-cord households as of 2007.¹³ The CDC made no effort to obtain state-by-state survey results with sufficient sample sizes, but instead derived these estimates using a “two-sample modeling strategy” of two data sources – CDC’s survey of wireless households (which according to CDC has insufficient sample sizes at the state level) and the 2008 Current Population Survey’s Annual and Social Economic Supplement, which “is a multistage probability household survey that provides data on labor force participation and unemployment.”¹⁴ In any case, Verizon also meets the share-of-residential lines test using these state-level estimates once they are adjusted, as they should be, for the significant degree of cord cutting since that time. As the lead author of the CDC study has noted, “[w]e would expect that today in 2009 the prevalence rates in every state have increased, perhaps by 5 percentage points or more.”¹⁵ Thus, even if the Commission were to use the CDC’s state-level estimates, it should adjust them upward by at least 5 percentage points. As Attachment B demonstrates, once this adjustment is made, Verizon’s competitors served approximately [Begin Confidential] [End Confidential] percent or more of residential lines in Cox’s service territory in the Virginia Beach MSA and approximately [Begin Confidential] [End Confidential] percent or more of residential lines in Rhode Island using the state-level estimates.

In addition to relying on old data, the significant range in the *CDC State Wireless Substitution Report*’s cut-the-cord estimates among the various states (from 5.1 to 26.2 percent) does not accurately reflect the relative degree to which wireless imposes competitive discipline in those states – which is the relevant inquiry in the forbearance analysis – but instead is likely due to other factors. For example, a wide variety of other types of factors may influence cut-the-cord rates, such as the regulated price of wireline service; demographics measures such as household incomes, age, gender, ethnicity, and education levels; and the degree of wireline competition. Thus, the *CDC State Wireless Substitution Report* shows that the rate of wireless substitution in Oklahoma is 26.2 percent, whereas the rate in California is 9 percent, even though the Commission’s data show that there are more wireless subscribers per capita in California (0.88) than in Oklahoma (0.75).¹⁶ In light of these issues with the CDC’s state-level data, the

¹³ Stephen J. Blumberg *et al.*, Nat’l Center for Health Statistics, CDC, *Wireless Substitution: State-level Estimates from the National Health Interview Survey, January-December 2007*, <http://www.cdc.gov/nchs/data/nhsr/nhsr014.pdf> (Mar. 11, 2009) (“*CDC State Wireless Substitution Report*”).

¹⁴ *Id.* at 2, 6.

¹⁵ *First-Ever State Estimates of Shift from Landlines to Cell Phones*, Associated Press (Mar. 11, 2009).

¹⁶ Compare Ind. Anal. & Tech. Div., Wireline Competition Bureau, FCC, *Local Telephone Competition: Status as of December 31, 2007*, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-285509A1.pdf at Table 14 (Sept. 2008) (wireless subscribers as of Dec. 2007) with U.S. Census Bureau, *Population, Population Change and Estimated Components of Population Change*,

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Commission should follow its original approach and use the CDC's national cut-the-cord figure with respect to both Rhode Island and the Virginia Beach MSA.

3. Verizon Meets the Commission's Forbearance Standard with Respect to Enterprise Customers

In the Omaha forbearance proceeding, the Commission decided to forbear from loop and transport unbundling with respect to enterprise customers based on competition from Cox, the incumbent cable operator. *See Omaha Forbearance Order* ¶¶ 66-67. Verizon demonstrated that, in both Rhode Island and Cox's service territory in the Virginia Beach MSA, it satisfied each of the factors the Commission adopted to guide this inquiry.¹⁷ The Commission has further held that its analysis of other types of competition for business customers, such as that provided by CLECs, is "incidental and supplemental to the Commission's determination" with respect to competition from cable. *Six MSA Order* ¶ 40 n.131. Verizon nonetheless demonstrated that other types of competition for business customers in Rhode Island and the Virginia Beach MSA – including from CLECs and alternative technologies such as fixed wireless – are more advanced than they were at the time of the Omaha decision.¹⁸

In prior proceedings where the Commission found that competition from cable "does not, without more, provide a sufficient basis for relief" the Commission also analyzed whether competition from other competitors that "have deployed their own extensive last-mile facilities for use in serving the enterprise market."¹⁹ For example, the Commission has considered data from GeoResults regarding the number of CLEC-lit buildings in the areas for which forbearance is sought. *See, e.g., id.* ¶ 36 & n.135. Here, there is no need to consider such data, however, because competition from cable alone does satisfy the Commission's forbearance tests. In any event, even if the Commission were to analyze the extent to which other competitors have deployed fiber, it should request relevant data from competitors themselves, rather than relying on GeoResults data.²⁰ As Verizon has previously explained, data from GeoResults are

<http://www.census.gov/popest/national/files/NST-EST2007-alldata.csv> (July 2007 population estimates).

¹⁷ *See* Rhode Island Pet'n at 21-26; Virginia Beach Pet'n at 21-26.

¹⁸ *See* Rhode Island Pet'n at 20, 26-30; Virginia Beach Pet'n at 20, 26-31.

¹⁹ *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, 23 FCC Rcd 11729, ¶ 36 (2008) ("Four MSA Order").

²⁰ *See* Reply Comments of Covad Communications Group, NuVox Communications, and XO Communications, LLC, *Petition of Verizon New England for Forbearance Pursuant to 47 U.S.C. § 160(c) in Rhode Island*, WC Docket No. 08-24, at 11-16 (May 12, 2008).

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incomplete and understate the extent of competitive facilities.²¹ GeoResults does not receive complete data for all CLECs, and some CLECs do not appear to provide any data to GeoResults.

In addition, the CLECs' presentation of GeoResults data is highly misleading, because it fails to take account of the fact that demand for special access is highly concentrated. The CLECs have claimed that, according to GeoResults, only a small percentage of buildings in Rhode Island and the Virginia Beach MSA have access to competitive fiber. But to compute this percentage, the CLECs count all commercial buildings in their denominator, rather than just those that generate special access demand. At many commercial locations, however, there is limited or no demand for special access. Moreover, in Verizon's experience, a small percentage of commercial buildings (e.g., the very large office buildings in concentrated downtown areas) tend to account for a very large share of special access demand. As the Commission has recognized, CLECs typically deploy their fiber networks to capture buildings with the greatest demand for special access,²² and therefore in any given area the percentage of special access demand these carriers are capable of serving is far greater than the percentage of total buildings they might serve.

Staff has asked for information regarding how Verizon divides its business customers internally. Verizon's own experience in serving business customers confirms that there are no clear-cut divisions between different types of business customers as enterprise customers occupy a continuum – ranging from single-location businesses with dozens of employees and limited voice and data needs, to multi-location businesses with hundreds or thousands of employees and the need for sophisticated data services, integrated voice and data service, and other advanced applications. At present, Verizon has only one principal division with respect to enterprise customers. Verizon Business currently serves enterprise customers with 500 employees or more, while Verizon's ILEC operations serve all other business customers. However, such information is not relevant to the forbearance analysis the Commission has applied previously, where it has correctly refused to analyze different categories of enterprise customers.

4. The Commission Cannot Maintain Unbundling Rules Where There Is No Impairment

In the Omaha forbearance proceeding, the Commission granted forbearance from unbundling obligations based on the so-called "coverage threshold" test that measured the extent

²¹ See Letter from Nneka Ezenwa, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 08-24, at 3 (July 1, 2008) ("July 1, 2008 R.I. Ex Parte").

²² See, e.g., *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533, ¶ 154 (2005) ("Triennial Review Remand Order") (stating that when competitive LECs are deciding whether and where to build their own facilities, they "target areas that offer the greatest demand for high-capacity offerings (i.e., that maximize potential revenues) and that are close to their current fiber rings (i.e., that minimize the costs of deployment).").

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to which competitors, and in particular the incumbent cable operator, had deployed facilities, in combination with evidence that the cable operator was capable of competing using those facilities, rather than UNEs. *See Omaha Forbearance Order* ¶¶ 62, 66. In the *Six MSA Order*, the Commission adopted a new share-of-residential-lines test, which looked at whether competitors as a whole also had achieved a particular market share. *See Six MSA Order* ¶ 37 & App. B. Verizon appealed this new test as inconsistent with both prior Commission precedent and the impairment standard of the 1996 Act. Throughout the course of these proceedings, the CLECs have argued that the Commission should further modify the previously applied tests to make it even more difficult for ILECs to obtain forbearance from unbundling obligations. As Verizon has demonstrated, there is no basis for such modifications, which are inconsistent with both past precedent and the impairment standard.²³ Several CLECs have recently filed yet another proposal to change the established forbearance standard and adopt stringent “market share” and “multiple competitor” tests.²⁴ The CLECs’ proposal cannot be squared with either past precedent or the Act and is fatally flawed in multiple respects.

First, there is no basis for the bright-line market share requirement that the CLECs have proposed. Under the 1996 Act’s impairment standard, the Commission can require incumbents to unbundle network elements only when competitors are impaired in their “ability” to provide telephone service without unbundled access to those elements. 47 U.S.C. § 251(d)(2)(B). In other words, unbundling, which is a temporary measure to facilitate competitors’ entry into the market, is appropriate only so long as competitors are unable to compete using their own facilities (or purchasing access to others’ facilities at market rates). Requiring competitors to obtain a certain market share before eliminating unbundling, with all its attendant costs, would conflict with the 1996 Act’s language and purposes, because competitors are able to compete long before they obtain a substantial percentage of the relevant market.

²³ *See* R.I. Reply at 9-20; Reply Comments of Verizon, *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in Cox’s Service Territory in the Virginia Beach Metropolitan Statistical Area*, WC Docket No. 08-49, at 10-24 (June 10, 2008) (“Virginia Beach Reply”).

²⁴ Under the proposed “wholesale test,” there would need to be “at least two facilities-based non-ILEC wireline competitors in the wholesale loop market, each of which has actually deployed end-user connections to 75-percent of end-user locations, each of which has deployed wholesale operations support systems sufficient to support the wholesale demand in the relevant product market, and each of which has garnered at least 15 percent of wholesale loop market share in the relevant product market.” The proposed “retail test” requires that “at least 75 percent of end-user locations are served by two or more facilities-based non-ILEC wireline competitors that offer retail service in the relevant downstream product market to the locations in question via loops that the competitors have actually deployed, and there are at least two facilities-based competitors to the ILEC that have each garnered at least 15 percent of retail market share in the relevant product market.” March 26 CLEC Letter at Attachment.

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Second, there is no basis to require that multiple competitors each serves a fixed percent of end-user locations and that each has obtained at least 15 percent of market share. Both the Commission and the courts have previously rejected such “multiple competitor” tests. For example, with respect to broadband, the D.C. Circuit found that, based on competition from cable alone, it was no longer necessary to require unbundling of the high frequency portion of ILEC loops used to provide broadband services.²⁵ The 1996 Act requires the Commission to eliminate mandatory unbundling where competition is possible without unbundled access. Where at least one competitor is in the market and providing service using its own facilities, such conditions clearly exist, because facilities-based competition is preferred to that based on UNEs.²⁶ Even on its own terms, the CLECs’ proposal is economically illogical – it would grant forbearance where two competitors have 30-percent combined market share, but deny forbearance where one competitor has a 50 percent share or more, or where three or more separate competitors each has a 10 percent share.

Third, the CLECs’ proposal improperly focuses on “facilities-based” “wireline competitors” and therefore ignores other forms of competition that the Commission and the courts have recognized as relevant. For example, the proposal would exclude competition from wireless, even though a very large and rapidly growing segment of the population clearly views wireless as a replacement for wireline phones.²⁷ The proposal also would exclude competitors who provide service through non-UNE wholesale alternatives such as Wholesale Advantage and resale. This is at odds with the Commission’s findings in prior forbearance orders that an ILEC facing facilities-based competition has “the incentive to make attractive wholesale offerings available so that it will derive more revenue indirectly from retail customers who choose a retail provider other than [the ILEC].”²⁸ In addition, in upholding the Commission’s determination in

²⁵ See *United States Telecom Ass’n v. FCC*, 290 F.3d 415, 429 (D.C. Cir. 2002) (vacating the *Line Sharing Order* because the Commission had required ILECs to provide line sharing at cost-based rates “with indifferences to . . . the state of [intermodal] competition in the market”); *United States Telecom Ass’n v. FCC*, 359 F.3d 554, 585 (D.C. Cir. 2004) (“*USTA II*”) (upholding the Commission’s refusal to require provision of line sharing as a UNE in light of “the substantial intermodal competition from cable companies”).

²⁶ See *USTA II* at 576 (holding that the “purpose of the Act is not to . . . guarantee competitors access to ILEC network elements at the lowest price that government may lawfully mandate,” but is “to stimulate competition – preferably facilities-based competition”).

²⁷ See July 1, 2008 R.I. Ex Parte at 2; Virginia Beach Reply at 10-11. See *Verizon Communications Inc. and MCI Inc., Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18433, ¶ 91 (2005) (in order for two competing technologies to constrain each other’s prices, it “only requires that there be evidence of sufficient substitution for significant segments of the mass market,” not that every customer views the two services as substitutes).

²⁸ *Omaha Forbearance Order* ¶ 67; see also *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections*

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the Omaha forbearance proceeding, the D.C. Circuit that “the *TRRO* explicitly recognized that an ILEC’s tariffed offerings could, in certain circumstances, be an avenue for competitive entry,” and that the Commission was reasonable to conclude those circumstances were met given “the combination of tariffed ILEC facilities and facilities-based competition.” *Qwest Corp. v. FCC*, 482 F.3d 471, 480 (D.C. Cir. 2007).

5. Verizon Seeks Substantially the Same Relief Granted in Omaha

As indicated in Verizon’s petitions, Verizon is seeking substantially the same regulatory relief the Commission granted in the *Omaha Forbearance Order*.²⁹ Verizon is seeking forbearance from loop and transport unbundling regulation pursuant to 47 U.S.C. § 251(c) and 47 C.F.R. § 51.319(a), (b) & (e). This applies to Verizon’s wholesale provision of voice-grade, DS1, and DS3 loop and transport facilities; Verizon has previously obtained relief from providing unbundled loop and transport facilities above the DS3 level.

Verizon’s petitions also seek forbearance from various dominant carrier regulations that apply to interstate switched access services. Verizon offers four basic types of switched access service: Feature Group A, Feature Group B, Feature Group C, and Feature Group D. A more detailed description of these services can be found on Verizon’s website, at <http://www22.verizon.com/wholesale/solutions/solution/Switched+Access.html>. Further detail can be found in Verizon’s interstate switched access tariff, which is Section 6 of Tariff F.C.C. No. 1, and is available online at <http://www22.verizon.com/tariffs/tariffs.html>. Verizon is seeking forbearance with respect to all of the switched access services it provides pursuant to this FCC tariff. As indicated in Verizon’s petitions, Verizon is seeking forbearance from the following regulations: 47 C.F.R. §§ 61.32, 61.33, 61.38, 61.58, 61.59, 61.41-61.49, 63.03, 63.04, 63.60-63.66, and from the Computer III requirements, including CEI and ONA requirements. Verizon is not seeking forbearance from 47 C.F.R. § 63.71.

With respect to switched access services, Verizon is seeking forbearance for both mass market and enterprise customers. Verizon has demonstrated that such forbearance is warranted. With respect to switched access for mass-market customers, the Commission has previously granted forbearance based on the share-of-residential-lines test, which Verizon has demonstrated is met in both Rhode Island and the Virginia Beach MSA. The Commission has also considered in its analysis other factors such as demand elasticities, firm cost, size, and resources, and the Commission has previously recognized that each of these factors is met to the same degree in Rhode Island and Virginia Beach as in the Omaha and Anchorage forbearance proceedings.³⁰

251(c)(3) and 252(d)(1) in the Anchorage Study Area, Memorandum Opinion and Order, 22 FCC Rcd 1958, ¶ 45 (2007) (“*Anchorage Forbearance Order*”).

²⁹ Rhode Island Pet’n at 3 & n.4; Virginia Beach Pet’n at 3 & n.5.

³⁰ See *Six MSA Order* ¶ 31.

With respect to switched access for enterprise customers,³¹ the Commission has previously granted forbearance based on a comparison of the number of business switched voice lines served by competitors to those served by the ILEC, as well on the factors noted above. Although Verizon has no way to determine the number of switched business lines that other competitors serve – and reiterates its request that the Commission collect such data – Verizon has demonstrated that the number of its own switched business lines has declined dramatically as a result of competition. For example, between January 1999 and year-end 2007, Verizon’s retail switched business lines in Rhode Island (including those lines served by the former MCI but excluding payphone lines) have declined from approximately [Begin Confidential] [End Confidential] to [Begin Confidential] [End Confidential], a decrease of approximately [Begin Confidential] [End Confidential] percent.³² Verizon also demonstrated that, according to data that competing carriers report to the FCC, competitors were serving approximately 98,000 business switched access lines in Rhode Island as of December 2006, not including lines served via UNEs.³³ With respect to Cox’s service territory in the Virginia Beach MSA, between year-end 1999 and year-end 2007, Verizon’s retail switched business lines (including those lines served by the former MCI but excluding payphone lines) declined from approximately [Begin Confidential] [End Confidential] to approximately [Begin Confidential] [End Confidential], a decrease of approximately [Begin Confidential] [End Confidential] percent.³⁴

6. Forbearance Will Not Negatively Affect Geographic Rate Averaging or Universal Service

In the *Six MSA Order*, the Commission asked future applicants for forbearance relief from dominant carrier regulation to address whether and how a grant of relief at the geographic level they seek would impact other rates in the applicable study area.” *Six MSA Order* ¶ 32

³¹ Although Verizon has not yet considered how it plans to implement such relief if granted, this is not relevant to and should not affect the Commission’s application of the relevant forbearance criteria.

³² See Declaration of Quintin Lew, John Wimsatt, and Patrick Garzillo Regarding Competition in Rhode Island ¶ 12, Rhode Island Pet’n Attach. E (“R.I. Lew/Wimsatt/Garzillo Decl.”); Declaration of Joseph Dunbar Regarding Competition in Rhode Island ¶ 2, Rhode Island Pet’n Attach. D.

³³ See Ind. Anal. & Tech. Div., Wireline Competition Bureau, FCC, *Local Telephone Competition: Status As of December 31, 2006*, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-279231A1.pdf, Tables 11 & 12 (Dec. 2007).

³⁴ See Declaration of Quintin Lew, John Wimsatt, and Patrick Garzillo Regarding Competition in Cox’s Service Territory in the Virginia Beach Metropolitan Statistical Area ¶ 12, Virginia Beach Pet’n Attach. C.

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n.102. Verizon has previously explained there is no concern regarding geographic rate averaging in Rhode Island. Rhode Island is part of the Verizon New England study area, but Verizon is required to provide separate reports for each state within the study area, and also is required to charge uniform interstate switched access rates throughout the state of Rhode Island.³⁵ With respect to Virginia Beach, there is likewise no valid concern. If Verizon is granted the requested forbearance with respect to interstate switched access in Cox's service territory in the Virginia Beach MSA, Verizon would no longer be a dominant carrier in that territory and would therefore no longer have an obligation to charge geographically uniform rates there. Verizon would not be able to raise rates in that territory due to the extensive competition that Verizon faces. As for other areas in Virginia outside of Cox's service territory in the Virginia Beach MSA, Verizon's interstate access rates would still be subject to price caps. And since costs are irrelevant under price caps, there is no concern that granting forbearance will affect rates in other parts of the state.

In the *Four MSA Order*, the Commission asked applicants for forbearance relief to address how such relief would affect the receipt of interstate access support (IAS) in the areas for which relief is sought. *Four MSA Order* ¶ 30 n.112. The Commission asked whether the applicant "should continue to receive IAS, and, if so, what conditions should apply" and asked applicants to "address how to ensure that grant of relief does not significantly reduce the amount it contributes to the universal service fund." *Id.*

As an initial matter, it would be inappropriate to impose conditions on forbearance relief related to IAS. The Commission currently allows competitive providers – both CLECs and wireless carriers – to receive the same IAS in a rural area that the rural ILEC receives for that same area. See 47 C.F.R. § 54.307(a)(1). Unlike Verizon, however, these competitive providers do not currently have a SLC, a SLC cap, or any of the related regulation that Verizon faces. If these competitive providers are entitled to IAS, there is no valid basis to treat an ILEC any differently in an area where federal pricing regulation has been removed based on a showing that sufficient competition exists to ensure that rates are at competitive levels.

In any event, Verizon does not believe that forbearance will or should affect its contributions to the universal service fund or its ability to draw IAS from that fund. To the extent that Verizon's contributions to the fund are based on the amount of SLC charges it collects, Verizon already has the ability to reduce or eliminate the SLC, and forbearance does not affect that.³⁶ Moreover, even if Verizon were to reduce or eliminate the SLC, that would not

³⁵ See R.I. Lew/Wimsatt/Garzillo Decl. ¶ 6 n.4.

³⁶ Indeed, the Commission has long recognized that the SLC could eventually be "competed away." See *Access Charge Reform*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, ¶ 89 (2000) ("Because PICCs are an external cost to the IXC's that they cannot reduce by managing it better or being more efficient, PICCs are unlikely to be competed away. Indeed, we are now into the third year of its introduction, and there is no sign that the PICC is being competed away. Rather, we believe that one of the major benefits of recovering

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Marlene H. Dortch
WC Docket Nos. 08-24, 08-49
April 10, 2009

enable Verizon to increase its ability to draw IAS from the universal service fund, because actual SLC revenues do not make a difference in the amount of IAS to which Verizon is entitled. Rather, an amount equal to the maximum amount Verizon is permitted to charge for the SLC is automatically imputed to Verizon, and forbearance would not affect this.

Please let me know if you have any questions.

Sincerely,



Attachments

cc: Don Stockdale
Stephanie Weiner
Jay Atkinson
Deena Shetler
Pamela Magna
Margaret Dailey
Tim Stelzig
Bill Sharkey
Amy Goodman

common line costs through the SLC alone is to encourage efficient competitive entry, particularly in providing competing alternatives for loop service.”); *id.* (“If common line costs are recovered in the SLC, a LEC can reduce its costs through efficiency gains and will have the incentive to avoid costs and reduce prices as it faces increased competition from competing local exchange carriers.”).

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ATTACHMENT A

**EXHIBIT 5A
RHODE ISLAND**

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ATTACHMENT A

EXHIBIT 5A
VIRGINIA BEACH

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ATTACHMENT A

EXHIBIT 6A
VIRGINIA BEACH

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ATTACHMENT A

**EXHIBIT 6A
RHODE ISLAND**

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ATTACHMENT A

EXHIBIT 7A
VIRGINIA BEACH

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ATTACHMENT A

EXHIBIT 7A
RHODE ISLAND

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ATTACHMENT A

**EXHIBIT 8A
VIRGINIA BEACH**

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ATTACHMENT A

**EXHIBIT 8A
RHODE ISLAND**

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ATTACHMENT A

EXHIBIT 9A
VIRGINIA BEACH

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ATTACHMENT A

EXHIBIT 9A
RHODE ISLAND

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